IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(Chapter VIII, Rule 32(2) (b)
Description of Case.

Appeal from Order No. 490 of 2003

Date of decision : 20th November, 2006

A.F.R. (Approved for reporting)

~~Not approved for reporting~~

Date :- Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No.490 of 2003

1. Smt. Bhagwati Kandpal W/o Sri Bhuwan Kandpal.
2. Sri Bhuwan Kandpal S/o Sri Badri Datt Kandpal.
3. Km. Hemlata Kandpal D/o Late Sri Basant Kandpal.
4. Km. Puspa Kandpal D/o Late Sri Basant Kandpal.
   (All R/o Village Shantipuri No. 2, Tehsil Kiccha,
   District Udham Singh Nagar) ..... Appellants

Versus

1. Sri Gajendra Singh S/o Sri Ram,
   R/o Kishanpur Sakulia, P.S. Motahaldu,
   District Nainital.
2. National Insurance Company Ltd.,
   Divisional Manager, Tikonia, Haldwani.
3. Sri K.B. Pathak S/o K.R. Pathak,
   R/o Shantipuri No. 2, Tehsil Kiccha,
   District Udham Singh Nagar.
4. New India Insurance Company Ltd.,
   Divisional Manager,
   Division Office Haldwani,
   District Nainital. ..... Respondents

Mr. Ashish Joshi, Advocate for the appellants.
None for respondents Nos. 1 & 3.
Mr. B.K. Gupta, Advocate for respondent No. 2 National Insurance Co. Ltd.
Mr. T.A. Khan with Mr. Rajesh Joshi, Advocate for respondent No. 4 New India Insurance Co. Ltd.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

RAJEEV GUPTA, C.J. (Oral)

The claimants have preferred this appeal under Section 173 of the Motor Vehicles Act for enhancement of the compensation awarded by Motor Accident Claims Tribunal / District Judge, Nainital vide Award dated 11.09.2003 passed in Motor Accident Claim Petition No. 190 of 2001.

2. The claimants, who are unfortunate parents and sisters of deceased Deepak Kandpal, claimed compensation of Rs. 20,25,000/-

for his death in the motor accident when on 04.10.2001, his motorcycle bearing registration No. UA06-0529, was dashed by the offending vehicle Dumper bearing registration No. UP02-C-0452 resulting in serious injuries to Deepak Kandpal, who succumbed to those injuries on his way to Delhi for treatment. On the report about the accident, a criminal case was registered at Police Station Haldwani against the driver of the Dumper. The claimants pleaded that deceased Deepak Kandpal used to earn Rs. 1,00,000/- per annum.

3. The owners and the insurers of both the vehicles, i.e. Motorcycle and Dumper, contested the claim and denied their liability to pay compensation to the claimants. The owner of the offending vehicle Dumper pleaded that the Motorcyclist, himself, was rash and negligent and as such, was responsible for the accident, whereas the insurer of the Dumper pleaded that the Dumper was being plied in breach of the policy conditions and the driver of the Dumper was not holding a valid driving license. The owner of the Motorcycle pleaded that as the motorcycle was insured with New India Insurance Co. Ltd., the liability to pay compensation to the claimants, if any, would be that of the Insurance Company. The insurer of the Motorcycle took the plea that the driver of the Dumper was responsible for the accident and as such, the liability to pay compensation would be that of the owner and insurer of the Dumper.

4. The claimants examined PW1 Smt. Bhagwati Kandpal, PW2 Subhash Chandra Joshi and PW3 Manoj Kandpal in support of their claim, whereas the owners and insurers of the Motorcycle and the Dumper did not examine any witness in rebuttal.

5. The Tribunal, on the evidence led by the parties, held that Deepak Kandpal died on account of the injuries sustained by him in the motor accident on 04.10.2001; the accident occurred due to the rash and negligent driving of the driver of the offending vehicle

Dumper; and the insurer of the Dumper was liable to pay compensation to the claimants.

6. On a close scrutiny of the evidence led by the claimants about the income of the deceased, the Tribunal assessed his income at Rs. 65,350/- per annum. By deducting 50% of the said amount as the personal expenses of the deceased, the Tribunal assessed the dependency of the claimants at Rs. 32,675/- per annum. By multiplying the annual dependency of Rs. 32675/- with the multiplier of '13', the compensation was worked out to Rs. 4,24,775/-. The Tribunal awarded Rs. 2,000/- towards Funeral Expenses and Rs. 25,00/- towards Loss of Estate. Thus, a total sum of Rs. 4,29,275/- was awarded as compensation to the claimants for the death of Deepak Kandpal in the motor accident. The Tribunal, further, directed the insurer of the offending vehicle Dumper to pay interest at the rate of 6% per annum from the date of the claim petition.

7. Mr. Ashish Joshi, the learned counsel for the appellants vehemently argued that the Tribunal has erred in deducting 50% of the income of the deceased as his personal expenses; and in not taking into consideration the fact that on account of the death of Deepak Kandpal in the motor accident, the liability to repay the loan, taken by the deceased from Bank of India, fell on his parents and they became liable to pay a sum of Rs. 10,00,000/-. The submission of the learned counsel for the appellants is that the Tribunal ought to have awarded this sum of Rs. 10,00,000/- in addition to the compensation of Rs. 4,29,275/-.

8. Mr. B.K. Gupta, the learned counsel for respondent No. 2 National Insurance Co. Ltd., the insurer of the offending vehicle Dumper, on the other hand, submitted that the Tribunal has been quite liberal in awarding compensation of Rs. 4,29,275/- by selecting the

higher multiplier of ‘13’, whereas multiplier of ‘10’ ought to have been applied as the claimants are parents of the deceased.

9. Mr. T.A. Khan and Mr. Rajesh Joshi, the learned counsel for respondent No. 4 New India Insurance Co. Ltd., the insurer of the Motorcycle, also supported the Award.

10. The findings recorded by the Tribunal that deceased Deepak Kandpal died on account of the injuries sustained by him in the motor accident; the accident occurred due to the rash and negligent driving of the driver of the offending vehicle Dumper; and the insurer of the Dumper was liable to pay compensation to the claimants have, now, attained finality as the respondents have not filed any appeal against the Award.

11. In a motor accident claim case, what is important is that the compensation to be awarded by the Tribunal / Court should be just and proper compensation in the facts and circumstances of the case. The Apex Court, in the case of **T.N. State Transport Corpn. Ltd. Vs. S. Rajapriya and others** reported in **(2005) 6 Supreme Court Cases 236**, observed in paras 8 to 10:

> “8. The assessment of damages to compensate the dependents is beset with difficulties because from the nature of things, it has to take into account many imponderables e.g. the life expectancy of the deceased and the dependents, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income together.
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> 9. The manner of arriving at the damages is to ascertain the net income of the deceased available for the

> support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of years' purchase.
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> 10. Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the overall picture that matters", and the court must try to assess as best as it can the loss suffered."

12. The claimants cannot have any grievance about the assessment of the income of the deceased by the Tribunal at Rs. 65,350/- per annum, as the same is founded on the income shown by the deceased in his Income Tax Return for the assessment year 2000-2001.

13. The Tribunal has deducted 50% of Rs. 65,350/-, the income of the deceased assessed by the Tribunal, as his personal expenses while determining the claimants' dependency as Rs. 32,675/-. The learned counsel for the appellants submitted that the Tribunal ought to have deducted only 1/3rd of the income of the deceased as his personal expenses.

14. The Apex Court, in the case of **New India Assurance Co. Ltd. Vs. Charlie and another** reported in **2005 AIR SCW 1801**, has observed in para 6:

> "6. What would be the percentage of deduction for personal expenditure cannot be governed by any rigid rule or formula by universal application. It would depend upon circumstances of each case....."

15. Deceased Deepak Kandpal was aged about 27 years. His father claimant No.2 Bhuwan Chandra Kandpal was employed in Bhowali Sanitorium, as has been admitted by claimant No. 1 Smt. Bhagwati Kandpal in her deposition before the Tribunal. As such, claimant No. 2 Bhuwan Chandra Kandpal was having his own regular income for maintaining himself and his wife claimant No. 1 Smt. Bhagwati Kandpal. Claimant No. 2 Bhuwan Chandra Kandpal was aged about 52 years at the time of the accident, whereas claimant No.1 Smt. Bhagwati Kandpal was aged about 43 years. Since deceased Deepak Kandpal was aged about 27 years, in due course, he would have married and after his marriage, his contribution towards the family would have been reduced substantially. On a cumulative consideration of the above-mentioned aspects of the matter, we do not find any fault in the deduction of 50% of the income of the deceased as his personal expenses by the Tribunal. In our opinion, the Tribunal has rightly assessed the claimants' dependency at Rs. 32,675/- per annum after deducting 50% of Rs. 65,350/- as the personal expenses of the deceased.

16. The multiplier of '13' selected by the Tribunal is rather on the higher side in view of the dictum of the Apex Court in the case of **Municipal Corporation of Greater Bombay Vs. Laxman Iyer and another** reported in **(2003) 8 SCC 731**, wherein it has been held that in those cases, where the claimants are parents of the deceased, the multiplier should never exceed '10'. We, however, do not deem it necessary to modify the multiplier, as the insurer of the offending vehicle Dumper has neither filed any appeal against the Award nor any Cross Objection in this appeal.

17. We do not find any substance in the submission of the learned counsel for the appellants that the Tribunal ought to have awarded Rs. 10,00,000/- (Rupees Ten Lakhs only) to the claimants towards the liability of loan, taken by the deceased from Bank of India, which fell

on the claimants on account of the death of deceased Deepak Kandpal in the accident. Such a concept is foreign to the assessment of compensation under Motor Vehicles Act. That apart, the assets, generated by the deceased from the said loan amount, also must have fallen to the share of the claimants. The above submission, therefore, is liable to be rejected and is hereby rejected.

18. The compensation of Rs. 4,29,275/- (Rupees Four Lakhs Twenty Nine Thousand Two Hundred and Seventy Five only) cannot be termed as ‘inadequate’ so as to warrant enhancement is this appeal.

19. From the records, we gather that the insurer of the offending vehicle Dumper deposited a total sum of Rs. 4,77,189/- in satisfaction of the impugned Award.

20. As we do not find any scope for enhancement of the compensation either on account of the income of the deceased or the claimants’ dependency assessed by the Tribunal or the multiplier selected, the appeal, filed by the claimants for enhancement of the compensation, is liable to be dismissed and is hereby dismissed.

21. No order as to costs.

(J.C.S. Rawat, J.) **(Rajeev Gupta, C. J.)**
20.11.2006 20.11.2006

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